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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B5

DATE: **APR 20 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software development company. It seeks to permanently employ the beneficiary in the United States as a network systems administrator and to classify him as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director denied the petition on the ground that the petitioner failed to establish that the beneficiary had the requisite education for the position, as specified on the labor certification (ETA Form 9089). A timely appeal was filed, along with additional documentation addressing the issue of the beneficiary's educational qualifications.

On February 10, 2012, the AAO sent a Request for Evidence (RFE) to the petitioner, advising that additional evidence of the petitioner's continuing ability to pay the proffered wage was needed before a decision could be issued on the appeal. The AAO indicated that the petitioner must establish its ability to pay the proffered wage from the priority date – December 7, 2007 – up to the present. As evidence thereof the AAO requested that copies be submitted of the petitioner's federal income tax returns for the years 2007-2010, and the beneficiary's Forms W-2, Wage and Tax Statements, for the years 2008-2011. The petitioner was afforded 45 days to respond to the RFE.

The petitioner did not respond within the 45-day period allowed in the RFE, or any time since then. If a petitioner fails to respond to a request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). As further provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Since the petitioner has not responded to the RFE of February 10, 2012, the petition is deniable under the regulatory provisions cited above. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.